Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

NO. 75-1079

IN THE MATTER OF THE LAST WILL AND TESTAMENT OF ELIZABETH J. BROOKS, DECEASED:

LUCY ELIZABETH BROOKS SCHANEFELT,
APPELLANT

v.

JOSEPH R. PARADISO,
APPELLEE

APPEAL FROM THE SUPREME COURT OF NEW MEXICO

JURISDICTIONAL STATEMENT

WARREN F. REYNOLDS, ATTORNEY FOR APPELLANT, LUCY ELIZABETH BROOKS SCHANEFELT

Post Office Box 638
Hobbs, New Mexico 88240

L. GEORGE SCHUBERT, ATTORNEY FOR APPELLEE, JOSEPH R. PARADISO

Post Office Box 796
Hobbs, New Mexico 88240

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JURISDICTIONAL STATEMENT

OPINION BELOW

The appellant is appealing from an unreported decision of the Supreme Court of New Mexico, affirming the order of the lower court dismissing appellant's Petition to set aside the will of the decedent herein. A copy of the decision is included in the appendix herein.

JURISDICTION

This cause was filed in Probate Court in Lea County, New Mexico by appellee seeking to have a will naming him sole beneficiary and executor admitted to probate. Later this cause was removed to District Court of Lea County, New Mexico where the district court entered its order admitting the will to probate.

Appellant filed a petition to set aside the will with appellee responding by moving to dismiss the petition on the ground that appellant was not an heir under 53 N.M.S.A., Sec. 29-1-15. Sec. 29-1-15 provides for inheritance by heirs of a predeceased wife if the deceased husband has no heirs. Appellant was the heir of a predeceased husband whose wife died without heirs. Appellant argued in

district court that if Sec. 29-1-15 did not apply to her it was unconstitutional under the Fourteenth Amendment of the Constitution of the United States.

Final judgment of the District Court granting appellee's motion to dismiss appellant's petition was entered on November 14, 1974 and is included in the appendix herein. Appellant filed a timely appeal to the Supreme Court of New Mexico. Final Judgment of the Supreme Court of New Mexico was entered on October 21, 1975. Appellant's notice of appeal was filed in the New Mexico Supreme Court on January 16, 19[illegible]. a copy of which is included in the appendix.

The jurisdiction of the Supreme Court of the United States for this direct appeal is granted by 28 U.S.C. Sec. 1257(2). The following cases are believed to sustain the jurisdiction of

the supreme court to review the decision of the Supreme Court of New Mexico on direct appeal in this cause. Fiske v. Kansas, 274 U.S. 380, 71 L.Ed. 1108 (1927); Coleman v. Miller, 307 U.S. 433, 83 L.Ed. 1385 (1939).

NEW MEXICO STATUTE INVOLVED

The New Mexico Statute whose constitutionality is being questioned reads as follows:

> Inheritance by heirs of wife. --If heirs are not thus found the portion uninherited shall go to the heirs of the wife of the intestate, if dead, according to like rules, and if he has more than one [1] wife, who died, it shall be equally divided between the heirs of all such wives, taking by right of representation. 53 N.M.S.A., Sec. 29-1-15

QUESTION PRESENTED

The question presented by the appeal is whether

Equal protection of the laws provided by the Fourteenth Amendment to the Constitution of the United States requires application of 53 N.M.S.A., Sec. 29-1-15 to heirs of deceased husbands as well as to heirs of deceased wives.

STATEMENT OF THE CASE

Briefly the facts are that appellee filed a Petition for Probate of Will in the Probate Court of Lea County alleging that he had in his possession an instrument purporting to be the Last Will and Testament of Elizabeth J. Brooks, deceased. He further alleged that "...the decedent had no relatives by consanguinity..." and that he was named in the will "...as her sole devisee and legatee..." He prayed that the will be admitted to probate and he be appointed as executor as designated in the will. (Tr. 1)

As an opponent to the admission of the will, the State of New Mexico filed a motion to transfer the proceedings to the District Court of Lea County, which motion was granted. (Tr. 4, 5) On April 15, 1974, the district court rendered its judgment admitting the will to probate and appointed appellee as executor. (Tr. 7)

On September 9, 1974, appellant filed a petition challenging the validity of the Last Will and Testament of the decedent. Appellee then filed a motion to dismiss the petition, alleging appellant was not an heir and not entitled to challenge the will. (Tr. 8, 9)

Appellant filed an amended petition alleging two additional persons as heirs of the deceased. (Tr. 10-14) Further, appellant alleged that she was the

daughter of the brother of decedent's only husband, Frank J. Brooks, who predeceased the decedent. Since decedent died with no heirs by consanguinity, appellant, her brother, Perry Hershey Brooks, and her nephew, Frederick Harrison Brooks, the only living relatives by consanguinity to Frank J. Brooks, are heirs of the deceased under 53 N.M.S.A., Sec. 29-1-15. (Tr. 11-13) An affidavit was filed that recited facts to establish these allegations. (Tr. 15)

Appellee in support of his motion to dismiss the petition urged that 53 N.M.S.A., Sec. 29-1-15, which was in force at the time of the decedent's death, only applied to inheritance by heirs of a predeceased wife and not to heirs of a predeceased husband. At the time of the decedent's death on March 27,

1973, Sec. 29-1-15 read as follows:

> Inheritance by heirs of wife. --If heirs are not thus found the portion uninherited shall go to the heirs of the wife of the intestate, if dead, according to like rules, and if he has had more than one [1] wife, who died, it shall be equally divided between the heirs of all such wives, taking by right of representation. (Tr. 30)

Appellant in rebuttal urged two propositions. First that 53 N.M.S.A., Sec. 29-1-15 also applied to inheritance by heirs of a predeceased husband by direction of 53 N.M.S.A., Sec. 29-1-22 which reads as follows:

> Provisions concerning widows apply to widowers.--All provisions of the law relating to wills and to estates of deceased persons made in regard to the widow of a deceased husband, shall be applicable to the surviving husband of a deceased wife. (Tr. 25)

Second, that even if Sec. 29-1-22 doesn't apply, Sec. 29-1-15 should en-

able inheritance by heirs of a pre-deceased husband. Otherwise, Sec. 29-1-15 is unconstitutional under the Fourteenth Amendment of the United States Constitution as a denial of equal protection of the law. (Tr. 26)

After hearing, the court granted appellee's motion to dismiss appellant's petition, holding that appellant was not an heir of the deceased. (Tr. 16) The court's reason for so holding was that "Laws of 1927, Chapter 163, Section 1" had been repealed in 1943. It provided "...that where a widow died intestate holding community property previously belonging to her and her husband that such property in the event of no children descended one-half to her heirs and one-half to the husband's heirs..." (Tr. 37) The Court held that "...repeal

of this statute...definitely indicates a legislative intent to abandon the practice of having community property descend to one spouse and then revert to the heirs of both spouses." (Tr. 37)

On appeal to the Supreme Court, the appellant repeated her contention that Sec. 29-1-15 was unconstitutional if not applied to the heirs of a predeceased husband as in the case at bar. Without written opinion the Supreme Court affirmed the district court's order granting appellee's motion to dismiss appellant's petition because appellant was not an heir of the decedent, Elizabeth J. Brooks.

THE QUESTION IS SUBSTANTIAL

The question raised in this appeal is substantial because the New Mexico statute discriminates against the heirs

of males in violation of equal protection of the law mandated by the Fourteenth Amendment to the Constitution of the United States. Heirs of a husband are ineligible for inheritance due only to the sex of their ancestor.

This court in Frontiero v. Richardson, 411 U.S. 677, 36 L.Ed. 2d 583, 93 S.Ct. 1764 (1974) held unconstitutional a federal statute providing unequal salaries for service members based on sex. In doing so this court stated that "Classifications based upon sex, like classifications based upon race...are inherently suspect, and must therefore be subject to close judicial scrutiny..."

As in Frontiero there is no valid reason that can be propounded for unequal treatment merely on the basis of sex. There is no valid reason why the

heirs of a deceased wife can inherit and the heirs of a deceased husband cannot. Such classification is arbitrary and unreasonable in violation of the Fourteenth Amendment. Stanley v. Illinois, 405 U.S. 645, 31 L.Ed. 2d 551, 92 S.Ct. 1208 (1972).

CONCLUSION

Since the problem of statutory discrimination because of sex is "...highly suspect" and a matter of current public concern, appellant believes the question presented by this appeal is substantial and that this court should find probable jurisdiction.

Respectfully submitted,

WARREN F. REYNOLDS

Warren F. Reynolds

ATTORNEY FOR APPELLANT,
LUCY ELIZABETH BROOKS
SCHANEFELT

ORDER OF THE DISTRICT COURT OF LEA COUNTY, NEW MEXICO, NEW MEXICO, dated November 14, 1974, in case No. 33,535 (formal parts omitted).

Before N. RANDOLPH REESE, District Judge

CAME ON for consideration Motion to Dismiss Petition of Lucy Elizabeth Brooks Schanefelt, as amended, and the Petitioner being represented by her attorney of record, Warren F. Reynolds, and the Respondent, Joseph R. Paradiso, being represented by his attorney of record, L. George Schubert, and the Court after considering the briefs submitted by the parties and being advised in the premises, finds:

1. It has jurisdiction of the parties hereto and the subject matter hereof.

2. That Petitioners are not heirs of Elizabeth J. Brooks, deceased, and such Petition, as amended, should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, By the Court, that the Petitioners be and [sic] such Petition and Amended Petition are hereby dismissed with prejudice.

/s/ N. Randolph Reese
District Judge

APPROVED AS TO FORM:

/s/ Warren F. Reynolds
Attorney for Petitioner

OPINION OF THE SUPREME COURT OF NEW MEXICO, dated October 21, 1975, in case 10312 (formal parts omitted).

Before McMANUS, JR., Chief Justice, OMAN, Justice and SOSA, JR., Justice.

WHEREAS, the above entitled cause having been heregofore [sic] submitted for decision, the cause now being ready for final disposition and the Court being sufficiently advised, Mr. Chief Justice McManus, Mr. Justice Oman and Mr. Justice Sosa concurring;

NOW, THEREFORE, IT IS CONSIDERED, ORDERED AND ADJUDGED by the Court that the judgment of the District Court of the Fifth Judicial District in and for the County of Lea, wherein this cause originated and by which Court said judgment was entered, be and the same is

hereby affirmed, and the cause is remanded to the aforesaid District Court.

/s/ John B. McManus, Jr.
Chief Justice

WE CONCUR:

/s/ LaFel E. Oman
Justice

/s/ Dan Sosa, Jr.
Justice

Dated: October 21, 1975

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES, dated January 16, 1976 in case 10312 (formal parts omitted).

Notice is hereby given that Lucy Elizabeth Brooks Schanefelt, the Petitioner-Appellant above named, hereby appeals to the Supreme Court of the United States from the Final Judgment of the Supreme Court of New Mexico entered on October 21, 1975, affirming the Judgment and Order of the lower court entered on November 17, 1974, dismissing the Petitioner-Appellant's petition to set aside the decedent's will herein.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257(2).

/s/ Warren F. Reynolds

Attorney for Lucy Elizabeth Brooks Schanefelt

Proof of Service

I, Warren F. Reynolds, the attorney for Lucy Elizabeth Brooks Schanefelt, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on January 16, 1976, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on opposing party thereto, Joseph R. Paradiso, appellee, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to L. George Schubert, Esq., Attorney for Joseph R. Paradiso, P. O. Box 796, Hobbs, New Mexico 88240.

/s/ Warren F. Reynolds

Attorney for Lucy Elizabeth Brooks Schanefelt

FILED IN THE SUPREME COURT OF THE STATE OF NEW MEXICO ON JANUARY 16, 1976.

/s/ Warren F. Reynolds

PROOF OF SERVICE

I, Warren F. Reynolds, the attorney for Lucy Elizabeth Brooks Schanefelt, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on January 24, 1976, I served a copy of the foregoing corrected Jurisdictional Statement on opposing party thereto, Joseph R. Paradiso, appellee, by mailing a copy in a duly addressed envelope, with first class postage prepaid to L. George Schubert, Esq., Attorney for Joseph R. Paradiso, P. O. Box 796, Hobbs, New Mexico 88240.

Warren F. Reynolds

ATTORNEY FOR LUCY
ELIZABETH BROOKS
SCHANEFELT

Post Office Box 638
Hobbs, New Mexico 88240

PROOF OF SERVICE

I, Warren F. Reynolds, the attorney for Lucy Elizabeth Brooks Schanefelt, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on January 16, 1976, I served a copy of a Jurisdictional Statement on opposing party thereto, Joseph R. Paradiso, appellee, by mailing a copy in a duly addressed envelope, with first class postage prepaid to L. George Schubert, Esq., Attorney for Joseph R. Paradiso, P. O. Box 796, Hobbs, New Mexico 88240.

Warren F. Reynolds

ATTORNEY FOR LUCY
ELIZABETH BROOKS
SCHANEFELT

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Hobbs, New Mexico 88240